

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10794 of 1995

with

CIVIL APPLICATION NO. 10400 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHALABHAI RAISINGHBHAI PAGGI EX-CONSTABLE

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

MR IS SUPEHIA for Petitioner

MR DA BAMBHANIA for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 19/12/96

ORAL JUDGEMENT

1. The petitioner, a retired Head-Constable, who retired voluntarily on 30.4.95 has been aggrieved by the action of the Government in withholding his gratuity, by letter dated 13.12.1995 and also for not paying final pension amount which was otherwise due and payable to him

on the ground that he has failed to vacate the Government accommodation allotted to him within stipulated time, and he has thereby rendered himself liable first to pay the economic rent and thereafter the commercial rent for overstaying in the Government accommodation. It is the case of the Government that the State of Gujarat and Sub-Treasury Officer has power to withhold the amount of final pension and the employee can not make grievance about such exercise of power by the State.

2. The petitioner has in this petition inter alia prayed that his gratuity amount should be released which under no law or circumstances could be withheld with interest at the rate of 18% p.a. and that he should also be paid the amount of his final pension which was due and payable to him under the terms and conditions of service.

3. The Ld. single judge while issuing rule on the petition has directed the respondents to pay the amount of gratuity due and payable to the petitioner within 15 days and the said amount is stated to have been deposited in this court and the petitioner is permitted to withdraw said amount from the registry of this court and the Registrar is directed to pay the amount by way of Account Payee cheque in favour of the petitioner.

4. Now remains the claim of the petitioner for payment of amount of final pension. Mr. D.A. Bommanian, Ld. AGP for the respondent-State has submitted that the Government is entitled to recover the amount of final pension subject to its right of legal recoveries and that since the employee is overstayed in the Government accommodation he was liable to make payment of economic and commercial rent and since he has failed to pay the same it can be recovered from his final pension. In my opinion, the submission has no merit and shall have to be rejected outright. Firstly, the Government can not be permitted to adjudge its own case and that too in its favour by holding some amount is due and payable to recover. Claim of nonpayment to the Government, if not established by law, shall have to be established by law by filing Civil Suit as held by P.D. Desai and in the present case admittedly what amount is due and payable to the Government and how such amount is due and payable is not established by the State by any procedure established by law. Ordinarily, the Services Tribunal can be the proper forum if such power is given to it in the absence whereof the State Government shall have to afford opportunity of being heard to the employee and thereafter shall have to establish its claim. Bald claim of any State Government unsupported by any decision or rules and

without establishing the liability of the employee to pay such amount, the respondents can not be permitted to assume to itself the power of judge to its own cause. The right of pension of an employee is well earned right by the employee by services rendered by him to the State and any attempt to deny such right of employee by the State shall have to be thwarted and condemned if it is not supported by any procedure established by law. Admittedly, in the present case, the respondent-State has not held any enquiry nor has issued any show cause notice to the petitioner nor has even adjudicated the liability of the petitioner in accordance with law to pay economic or commercial rent for overstaying in the Government accommodation. In the absence thereof, the only remedy available to the State is to institute a suit and to get the liability of the employee determined and thereafter to proceed to deduct the amount from the final pension payable to the employee. That is having not been done the State Government can not be permitted to assume the power of a judge in its own cause and withhold the pension amount of the employee. The petition is therefore required to be allowed on this count also. Right of pension is regarded by the Supreme Court as a fundamental right flowing from the services rendered by the employee to the State and it is stated to be the only source of livelihood after retirement of an employee and ordinarily it should not be denied to any employee except as per the procedure established by law. This is not a case where the respondents have followed the procedure established by law and therefore the action of only paying provisional pension and not paying final pension as well as the action of withholding the gratuity are liable to be quashed and set aside.

5. In the result this petition succeeds. Respondents are directed to pay amount of final pension to the petitioner within ten weeks from today failing which the respondent-State will be liable for contempt of court as well as for payment of interest at the rate of 24% p.a. from the day such amount is withheld from the employee.

6. In the result, rule is made absolute to the aforesaid extent. No order as to costs. In view of the orders on main SCA no order on CA.

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